

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 THOMAS H. BROCK,
12 Plaintiff,

13 v.

14 MICHAEL ASTRUE, Commissioner of
15 Social Security,

16 Defendant.

No. C 08-4829 CRB

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT AND DENYING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

18 Plaintiff Thomas Brock ("Brock") asks this Court to review the Social Security
19 Commissioner's decision denying his application for disability benefits under Title II of the
20 Social Security Act. The Administrative Law Judge ("ALJ") concluded that Brock did not
21 suffer from a severe impairment on or before December 31, 1998, the date Brock was last
22 insured. Plaintiff now moves for summary judgment, arguing that the ALJ improperly
23 discounted his testimony regarding the severity of his pain, failed to give proper weight to
24 the opinion of his treating physician, and erroneously disregarded the testimony of lay
25 witnesses. Defendant cross-moves for summary judgment, arguing that the ALJ's decision
26 was supported by substantial evidence and was free of legal error.

27 For the reasons discussed below, this Court affirms the ALJ's decision. The Court
28 therefore GRANTS Defendant's Motion for Summary Judgment and DENIES Plaintiff's
motion.

1 **1. Procedural History**

2 On August 1, 2003, Brock, a former self-employed automobile leasing agent, filed an
3 application for disability insurance benefits under Title II of the Social Security Act. AR 93-
4 95. In his application, Brock alleged a disability onset date of March 1, 1994. AR 93. He
5 further stated that he was unable to continue his work as a loan officer due to, among other
6 things, high blood pressure; circulatory problems; shortness of breath; borderline diabetes;
7 back, neck, and left arm pain; arthritis; gout; hernia; severe headaches; post-operative penis
8 pain; obesity; and depression. AR 106-114.

9 The Commissioner denied Brock's application initially and on reconsideration. AR
10 44, 52. Brock then requested a hearing before an ALJ, which was held on January 31, 2007.
11 AR 511.

12 **a. The Hearing**

13 The ALJ began the hearing by noting that Brock had filed a Title II application only
14 and that the date Brock was last insured was December 31, 1998. AR 513. Brock agreed
15 that this information was correct. AR 513. As a result, Brock was required to establish that
16 he was disabled on or before December 31, 1998. *See* 42 U.S.C. § 423(c)(1); *Tidwell v.*
17 *Apfel*, 161 F.3d 599, 601 (9th Cir. 1998) (to qualify for benefits under Title II, claimant must
18 establish disability on or before the date last insured).¹

19 To establish that he was disabled on or before the relevant date, Brock presented three
20 forms of evidence. The first was his own testimony. AR 515-531. During that testimony,
21 Brock stated that his severe health problems began after he was involved in three car
22 accidents: one on January 9, 1995, one on April 16, 1995, and one on November 27, 1996.
23 AR 514. According to Brock, he "couldn't do anything [after the accidents]" due to "severe
24 pain" in his head and neck, "severe headaches," and "bad nerve pain" down his left arm. AR

25 ¹Brock maintains that he amended his onset date from March 1, 1994 to December 31,
26 1998. Plaintiff's Brief at 12. The Court agrees with the ALJ that there is no evidence in the
27 record that shows that Brock amended his onset date. Moreover, Brock, his physician, and his
28 lay witnesses all testified that Brock's serious medical problems began after his involvement in
three car accidents, the last of which occurred two years before his amended onset date. In any
event, Brock was required to establish that he was disabled on or before his date last insured,
December 31, 1998, regardless of the onset date of his disabilities.

1 516. He reported having trouble concentrating after the accidents and stated that he could
2 perform his work as an auto-leasing agent for no more than an hour without “lay[ing] down
3 or sit[ting] down for long periods of time.” AR 520. In addition, Brock stated that his
4 injuries from the accident prevented him from exercising, which, in turn, led to substantial
5 weight gain and the onset of depression. AR 515, 517, 523, 534. Finally, Brock indicated
6 that he began to experience penile pain in 1998 (which he ascribed to his weight gain) and
7 that the pain necessitated surgery in November 1998. AR 517. As a result of these
8 problems, Brock stated that he “wouldn’t have been able to do a day’s work” in December
9 1998. AR 529.

10 In addition to his own testimony on the nature and severity of his impairments, Brock
11 introduced a voluminous medical history. AR 142-483. The bulk of that history, which
12 dates from July 1994 to January 2006, consisted of medical reports by Dr. Beverly Thomas,
13 Brock’s primary care physician since the 1970s. Of particular relevance to this appeal,
14 Thomas opined, in a letter dated January 23, 2006, that

15 In 1998, Mr. Brock was a mess. He had chronic pain with sitting, standing and
16 walking. Recurrent upper extremity pain and numbness impaired his dexterity.
17 Any prolonged activity exacerbated his pain. He had frequent headaches and
18 was persistently tired. . . . His obesity impacted on all his problems. . . . Mr.
19 Brock’s obesity also contributed greatly to the depression that affected him
since his auto accidents. His accident and the resulting pain were the last
straws for this gentleman who was struggling to keep himself in physical shape
and who had associated himself with athletics throughout his life.

20 AR 268-69. Thomas concluded, “Given these problems, I do not believe that Mr. Brock had
21 the strength, stamina, or focus necessary to work even a 6 hour day on any regular basis in
22 December 1998 or at any time afterwards.” AR 269.

23 Brock’s final evidence in support of his disability claim were statements from four
24 lay witnesses. These witnesses were Jeffrey Manos, Brock’s former attorney; Jerry
25 Sonnenberg, Brock’s neighbor; Rajendra Parshad, a janitor at Brock’s former office building;
26 and Michael Yeung, a former customer. AR 136-141. Though the statements differ in their
27 particulars, their central theme is that Brock’s mental and physical health declined
28 significantly after the automobile accidents. AR 137 (Manos: “After the accidents, Thom

1 never seemed the same to me He appeared uncomfortable and fatigued, and seemed to
2 be in genuine distress); AR 141 (Yeung: “[E]ver since his accidents, his demeanor
3 dramatically went downhill. He is always complaining about pains in his body.”); AR 133
4 (Parshad: “[In 1998, I] almost always found Mr. Brock lying on his couch. The expressions
5 on his face indicated that he was in severe pain.”); AR 140 (Sonnenberg: “Tom has seemed
6 depressed since it became apparent that the ongoing pain would continue to stop him from
7 moving freely or without pain and discomfort in his day-to-day activities.”).

8 Following the presentation of Brock’s evidence, the ALJ heard testimony from two
9 appointed medical experts and a vocational expert. The first medical expert, Dr. Alan
10 Coleman, testified that it was “hard . . . to find objective documentation” supporting the
11 alleged severity of Brock’s ailments and that, in his opinion, Brock did not suffer from a
12 severe impairment on or before December 31, 1998. AR 539, 542.

13 The second expert, psychiatrist Thomas Singer, stated that there was “insufficient
14 medical evidence” to establish that Brock suffered from a mental impairment prior to the date
15 last insured. AR 545. Following Singer’s testimony, Vocational Expert Nancy Rynd opined
16 that an individual without severe physical limitations or mental impairments would be able to
17 perform Brock’s past work as a self-employed loan officer. AR 548-552.

18 **b. The ALJ’s Decision**

19 On March 4, 2007, the ALJ issued a decision denying Brock’s disability claim. At
20 step one of the Social Security Administration’s five-step evaluation process, the ALJ found
21 that Brock had not engaged in substantial gainful activity through the date last insured.
22 Moving to step two, the ALJ concluded that Brock had the following medically determinable
23 impairments: morbid obesity, hypertension, history of diabetes, history of penile surgery,
24 cervical degenerative disc disease, hypertensive heart disease and hyperlipidemia. AR 22.
25 He also found that these impairments “could have been reasonably expected to produce the
26 alleged symptoms.” AR 25.

27 Despite these findings, the ALJ ultimately concluded that the record did not support a
28 finding that these impairments, in fact, “significantly limited [Brock’s] ability to perform

1 basic work-related activities” on or before December 31, 1998.² AR 22. As a result, Brock
2 did not have a “severe impairment or combination of impairments” as of the date last insured.
3 AR 23. In reaching this conclusion, the ALJ found Brock’s statements “concerning the
4 intensity, persistence and limiting effects of [his] symptoms” to be “not entirely credible.”
5 AR 25. The ALJ also gave less weight to Dr. Thomas’s opinion on the severity of Brock’s
6 impairments because Thomas’s “[contemporaneous] progress notes were inconsistent with
7 her opinion, . . . her opinion [was] not supported by claimant’s daily activities,” and the
8 opinion was inconsistent with other objective medical evidence. AR 26. The ALJ likewise
9 discounted the statements of Brock’s third party witnesses because those statements were
10 “inconsistent with the claimant’s activities” and “not supported by corroborative objective
11 findings.” AR 27.

12 Brock appealed the ALJ’s decision to the Social Security Appeal Council, which
13 issued a decision denying Brock’s appeal on August 22, 2008. AR 44. Brock now asks this
14 Court to review the Commissioner’s denial of benefits.

15 **2. Standard of Review**

16 This Court will reverse an ALJ’s decision to deny social security benefits only if the
17 decision is based on legal error or unsupported by substantial evidence. *Magallanes v.*
18 *Bowen*, 881 F.2d 747, 750 (9th Cir.1989). The “substantial evidence” standard requires less
19 than a preponderance but more than a scintilla; it demands “such relevant evidence as a
20 reasonable mind might accept as adequate to support a conclusion.” *Id.* The Court must
21 review the record as a whole, “weighing both the evidence that supports and that which
22 detracts from the ALJ’s conclusion.” *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir.1995).
23 Where the record is susceptible to more than one interpretation, this Court must uphold the
24 ALJ’s interpretation of it. *Id.*

25 **3. Discussion**

26 The ALJ concluded that Brock’s ailments were not severe, and hence did not qualify
27 him for benefits. An impairment is “severe” if it significantly limits a claimant’s ability to

28 ² The ALJ acknowledged that Brock’s symptoms have worsened since 1998. AR 25.

1 perform basic work activities for at least a consecutive twelve month period. *See* 20 C.F.R. §
2 416.920(a)(4)(ii); 61 Fed.Reg. 34,468, 34,469 (1996). An impairment “is considered ‘not
3 severe’ if it is a slight abnormality[] that causes no more than minimal limitation in the
4 individual’s ability to function independently, appropriately, and effectively in an
5 age-appropriate manner.” 61 Fed.Reg. at 34,469.

6 Brock argues that the ALJ erred in three ways when he concluded that Brock’s
7 impairments did not significantly limit Brock’s ability to do basic work. First, Brock
8 maintains that the ALJ’s failed to provide “clear and convincing reasons” for finding
9 Brock’s symptom testimony not entirely credible. Second, Brock argues that the ALJ
10 improperly discounted the testimony of Brock’s treating physician, Dr. Thomas. Finally,
11 Brock contends that the ALJ failed to consider the entire record. In particular, Brock avers
12 that the ALJ “improperly disregarded the substantial lay evidence” regarding the severity of
13 Brock’s impairments. Plaintiff’s Brief at 7.

14 For the reasons discussed below, this Court finds that the ALJ’s conclusion that Brock
15 did not have a severe impairment is supported by substantial evidence. That evidence is
16 highlighted by the clear and convincing reasons the ALJ provided for discounting Brock’s
17 testimony and the opinion of Brock’s treating physician. Moreover, contrary to Brock’s
18 assertion, the ALJ considered the entire record, including the statements of Brock’s lay
19 witnesses, in reaching his decision.

20 **a. The ALJ’s Adverse Credibility Finding**

21 At the hearing, Brock testified that, due to his various impairments, he was unable to
22 work for more than an hour at a time in December 1998 and “wouldn’t have been able to do
23 a day’s work.” AR 520. The ALJ found this and other similar assertions regarding the
24 severity of Brock’s impairment to be “not entirely credible,” a conclusion that Brock
25 challenges in this appeal.

26 Where, as here, a claimant has impairments that could reasonably be expected to
27 produce the alleged symptoms and there is no evidence of malingering, an “ALJ can reject
28 the claimant’s testimony about the severity of [his] symptoms only by offering specific, clear

1 and convincing reasons for doing so.” *Smolen v. Chater*, 80 F.3d 1273, 1281 (9th Cir. 1996).
2 These reasons must be supported by substantial evidence. *Thomas v. Barnhart*, 278 F.3d
3 947, 959 (9th Cir. 2002).

4 Here, the ALJ provided three clear and convincing reasons for rejecting Brock’s
5 testimony. First, the ALJ stated that “the extent of [Brock’s] alleged limitations [was] not
6 supported by objective evidence.” AR 25; *See Parra v. Astrue*, 481 F.3d 742, 750 (9th Cir.
7 2007) (holding that the existence of objective medical evidence in the record that
8 contradicted complainant’s subjective testimony was a clear and convincing reason to reject
9 that testimony). The ALJ noted, for example, that, despite Brock’s allegations of disabling
10 neck and back pain following his car accidents, an April 1995 x-ray of Brock’s neck showed
11 no fracture or dislocation of the cervical spine, a March 1995 CT scan “showed no fracture
12 [or] disc protusion” and “no definite evidence of right polyneuropathy or cervical
13 radiculopathy,” and an August 1995 MRI revealed only “moderate” and “mild” damage to
14 Brock’s spinal cord. AR 25, 145, 146. Moreover, the record contains no x-rays or other
15 objective medical evidence that show that Brock’s back, neck, and arm injuries were severe.

16 Similarly, Brock’s medical record from the late 1990s contains “no . . . psychiatric or
17 mental health treatment notes” to corroborate Brock’s allegations of severe depression. AR
18 26. These inconsistencies between Brock’s testimony and the objective evidence “constitute
19 significant and substantial reasons to find [Brock’s] testimony less than completely credible.”
20 *Parra*, 481 F.3d at 750.

21 As an additional reason for discrediting Brock’s testimony regarding the severity of
22 his pain, the ALJ noted that Brock “received conservative treatment, and even though he
23 reported debilitating pain systems, he was not prescribed severe pain medications.” AR 26.
24 “[E]vidence of ‘conservative treatment’ is sufficient to discount a claimant’s testimony
25 regarding severity of an impairment.” *Parra*, 481 F.3d at 751.

26 Brock maintains that the description of his treatment as “conservative” is inaccurate.
27 Plaintiff’s Reply at 8. He notes that his treatment included “80 doctor’s visits, multiple
28 physical therapy sessions, traction, aqua therapy, and non-narcotic pain medications.” *Id.*

1 This argument fails for the simple reason that Brock's treating physicians themselves
2 described their treatment of Brock's back, neck and arm injuries as "conservative." AR 460
3 (Report of Dr. Baiz: "[W]e would indeed agree the best approach would be a continued
4 conservative one."). This "conservative" treatment included "cervical home traction" and an
5 Advil prescription. AR 460. Moreover, as the ALJ indicated, the record demonstrates that
6 Brock was not prescribed severe pain medications at any point prior to the date last insured.
7 Thus, the ALJ's finding that Brock's treatment for his alleged pain was a conservative one is
8 supported by the record.

9 Brock also alleges that the ALJ's finding with respect to the intensity of his treatment
10 was in error because the ALJ failed to consider whether Brock could afford more robust
11 treatment. Plaintiff's Brief at 14. This argument is unavailing. As the Commissioner points
12 out, Brock has been prescribed and continues to take multiple non-pain medications,
13 indicating that the cost of prescription medication has not been a primary consideration in his
14 care. Brock's lengthy medical history similarly demonstrates that access to care is not an
15 issue. Also, the reasons Brock's physicians gave for prescribing conservative treatment were
16 based on his condition, not on his inability to pay for more aggressive options. In short, there
17 is little, if any, evidence in the record that suggests that Brock's conservative treatment was
18 the result of his inability to pay for alternative treatments.

19 The ALJ's final reason for his adverse credibility finding was the inconsistency
20 between Brock's alleged limitations and his daily activities during the mid- and late-1990s.
21 AR 25; *See Burch v. Barnhart*, 400 F.3d 676, 681 (9th Cir. 2005) (noting that inconsistencies
22 between a claimant's alleged limitations and his daily activities are a legitimate grounds for
23 an adverse credibility finding). As the ALJ pointed out, treatment notes from a February
24 2000 medical examination indicate that Brock was "active" and "walking on a regular basis."
25 AR 196. The report also states that Brock was "work[ing] in finance" at the time. AR 196.
26 Brock himself testified that he did not close his office until 2000, more than a year after his
27 date last insured.

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In addition, between 1994 and 1998, Brock frequently informed his treating physician, Dr. Thomas, that he was working and that he was feeling well. AR 26. During a visit in March 1997, for instance, Brock told Thomas he was “marketing his business [and] testing using telemarketing [for] new business.” AR 172. He also informed Thomas that he was walking for an hour and a half every day passing out handbills. AR 172. Similarly, Brock reported to Thomas that he was “working on new aspects of [his] business” in July 1997 and that he “[felt] better about [his] business” in December 1997. In January 1998, he told Thomas that “[b]usiness had picked up.” And in May he informed her that he was “doing okay.” AR 156, 175, 261. Perhaps most notably, Brock reported in January 1999, one month after his date last insured, that he felt “entirely well.” AR 444. In sum, the record contains substantial evidence in support of the ALJ’s conclusion that Brock engaged in work and other activities during the relevant period that were inconsistent with the alleged severity of his disability.

In conclusion, the Court finds that the ALJ provided clear and convincing reasons for finding Brock’s symptom testimony to be “not entirely credible.” Those reasons were a lack of objective evidence corroborating Brock’s testimony, the use of conservative treatment, and the inconsistencies between Brock’s daily activities and the alleged severity of his impairments. Each of these reasons is supported by substantial evidence in the record.

b. Opinion of Brock’s Treating Physician

In 2006, Dr. Thomas opined that Brock lacked “the strength, stamina, or focus necessary to work even a 6 hour day on any regular basis in December 1998 or at any time afterwards.” AR 269. The ALJ gave this opinion “less weight because . . . [Thomas’s contemporaneous] progress notes were inconsistent with [the] opinion as they noted claimant was working and doing well, [the] opinion [was] not supported by claimant’s activities and inconsistent with objective findings and the EMG study revealed no definite evidence for cervical radiculopathy.” AR 26. Brock maintains that the ALJ’s decision to give his treating physician’s opinion less weight was improper.

1 “When a nontreating physician’s opinion contradicts that of the treating physician –
2 but is not based on independent clinical findings, or rests on clinical findings also considered
3 by the treating physician – the opinion of the treating physician may be rejected only if the
4 ALJ gives ‘specific, legitimate reasons for doing so that are based on substantial evidence in
5 the record.’” *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999)
6 (quoting *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir.1995)). “Opinions of a
7 nonexamining, testifying medical advisor may serve as substantial evidence when they are
8 supported by other evidence in the record and are consistent with it.” *Id.*

9 Here, Dr. Coleman, a non-examining physician, disagreed with Dr. Thomas’s
10 assessment of Brock’s condition in December 1998. AR 538. In Coleman’s opinion, there
11 was a lack of “objective documentation” to support Dr. Thomas’s conclusion. What little
12 documentation did exist did not, in Coleman’s view, establish that Brock’s impairments were
13 “severe.” AR 539.

14 Given that Coleman’s opinion contradicted Thomas’s views, the ALJ was required to
15 give “specific, legitimate reasons” for discounting Thomas’s opinion that were based on
16 substantial evidence in the record. *See Morgan*, 169 F.3d at 600. The Court finds that he did
17 so here.

18 First, the ALJ noted that Dr. Thomas’s 2006 opinion was inconsistent with her
19 contemporaneous progress notes from the relevant time period. As discussed above, Thomas
20 frequently reported that Brock was working and engaging in other physical activity between
21 1994 and 1998. In addition to the instances cited above, in November 1997, Thomas
22 directed Brock to “change [his] work area to ergonomic,” to walk daily, and to go to the gym.
23 AR 261. These directions indicate that Thomas believed Brock was working in late 1997
24 and that he was capable of engaging in physical activity at that point. They also contradict
25 Thomas’s statement that Brock’s auto “accident[s] and the resulting pain were the last
26 straws” for Brock. AR 268. The third and final of Brock’s auto accidents occurred in
27 November 1996, a full year before Thomas indicated that Brock was still working and
28 recommended that he partake in additional physical exercise.

1 Thomas's retrospective diagnosis is also undermined by the fact that she prescribed
2 only conservative treatment during the period in question. She did not prescribe severe pain
3 medication after Brock's automobile accidents. Nor did she refer Brock to a mental health
4 practitioner even though he complained of depression and informed Thomas that he had
5 stopped taking the anti-depression medications that she had prescribed.

6 In short, substantial evidence supports the ALJ's conclusion that Brock's 2006
7 statement regarding Brock's condition eight or more years earlier was not consistent with her
8 contemporaneous notes. As a result, this finding was a legitimate reason to discount
9 Thomas's opinion. *See Johnson v. Shalala*, 60 F.3d 1428, 1433 (9th Cir. 1995) (finding no
10 error where the ALJ rejected a treating physician's opinion on the ground that the physician's
11 "retrospective conclusion . . . contradict[ed] his own contemporaneous finding[s]").

12 The second reason the ALJ supplied for giving less weight to Thomas's opinion was
13 that it was not consistent with Brock's daily activities. As discussed above, evidence in the
14 record demonstrates that Brock was working and otherwise physically active in 1997 and
15 1998. Brock also reported feeling "entirely well" in January 1999. Given this evidence, the
16 ALJ's second reason for disregarding Thomas's opinion was also legitimate.

17 Finally, the ALJ gave less weight to Dr. Thomas's diagnosis because her opinion was
18 not supported by objective evidence, such as an EMG study that "revealed no definite
19 evidence for cervical radiculopathy." Various x-rays, MRIs, and CT scans of Brock's back
20 and neck failed to show that Brock suffered from a significant back or neck injury. AR 25,
21 145, 146. No scans or x-rays revealed otherwise. In addition, as non-examining psychiatrist
22 Singer noted, there are no psychiatric or mental health treatment notes to confirm Dr.
23 Thomas's retrospective diagnosis of a severe mental impairment. AR 545-47. Thus, as found
24 by the ALJ, Thomas's assertion that Brock suffered from debilitating physical injuries and
25 mental impairments in 1998 runs counter to the objective medical evidence in the record.
26 This too was a legitimate reason to discount Thomas's diagnosis. *See Tommasetti v. Astrue*,
27 533 F.3d 1035, 1041 (9th Cir. 2008) (holding that the ALJ provided a "specific and
28

1 legitimate reason” for rejecting the opinion of a treating physician when he cited the fact that
2 the physician’s opinion “did not mesh with [the claimant’s] objective data or history”).

3 In sum, substantial evidence supports the ALJ’s specific and legitimate reasons for
4 discounting the retrospective diagnosis of Brock’s treating physician, Dr. Thomas. Those
5 reasons included inconsistencies between the diagnosis and Thomas’s contemporaneous
6 notes, inconsistencies between the diagnosis and Brock’s daily activities, and a lack of
7 corroborating objective evidence.

8 **c. ALJ’s Consideration of the Entire Record**

9 In his final argument, Brock asserts that the ALJ failed to consider the entire record.
10 In particular, Brock maintains that the ALJ improperly disregarded the opinions of Brock’s
11 four lay witnesses.

12 Brock’s argument is without merit. With respect to the lay witnesses, the ALJ first
13 noted that their testimony was “consistent with claimant’s allegations.” AR 24. He then
14 explained that he was giving “less weight” to the third party statements for the same reasons
15 he discounted Brock’s subjective testimony, namely “because [the statements were]
16 inconsistent with claimant’s activities and . . . not supported by corroborative objective
17 findings.” AR 27. The ALJ therefore clearly considered the statements of Brock’s lay
18 witnesses and provided clear and convincing reasons for disregarding them.

19 In reaching his decision to deny benefits, the ALJ also considered Brock’s voluminous
20 medical history, the opinion of his treating physician, Brock’s testimony at the hearing, and
21 the testimony of non-examining physicians Coleman and Singer. The Court therefore finds
22 that the ALJ fulfilled his duty to consider the entire record.

23 **d. Summary**

24 The Court finds that substantial evidence supports the ALJ’s decision denying Brock’s
25 disability claim. That evidence includes objective medical reports which indicate that
26 Brock’s back, neck and arm injuries were not severe, the absence of objective medical
27 evidence indicating otherwise, Brock’s reports that he continued to work and perform other
28 physical activities during the mid- and late-1990s, Brock’s statements that he felt well during

1 the relevant period, Brock's conservative treatment, and non-examining physicians
2 Coleman's and Singer's opinions that Brock did not have a severe disability on December
3 31, 1998. This and the other evidence cited by the ALJ also provided clear and convincing
4 reasons to discount Brock's subjective symptom testimony and the opinion of Brock's
5 treating physician, Dr. Beverly Thomas.

6 **4. Conclusion**

7 The Court is mindful that Plaintiff Brock suffers from a number of medical
8 impairments and that the severity of those impairments has worsened over time. If this Court
9 was evaluating Brock's condition as of today, it might very well reverse a denial of benefits.
10 The issue in this case, however, is whether substantial evidence supports the ALJ's
11 conclusion that Brock was not disabled on or before December 31, 1998. For the reasons
12 explained above, the Court finds that it does. Accordingly, the Commissioner's motion for
13 summary judgment is GRANTED, and Plaintiff's is DENIED.

14 **IT IS SO ORDERED.**



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17 Dated: March 23, 2010
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CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE